

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Wednesday, September 29, 2021

Hearing Room 1675

11:00 AM

2:00-00000

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

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<https://www.cacb.uscourts.gov/judges/honorable-robert-n-kwan> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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2:18-11475 Catherine Trinh

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Adv#: 2:19-01506 Trinh v. Second Generation, a California corporation

#1.00 Cont'd status conference re: Complaint for: (1) declaratory relief; (2) avoidance and recovery of preferential transfer; (3) recovery of property; (4) preservation of a preferential transfer; and (5) disallowance of claim
fr. 2/17/21, 6/9/21, 8/25/21

Docket 1

***** VACATED *** REASON: Cont'd from 9/29/21 to 12/1/21 at 11:00 a.m.
per stip & order entered on 9/13/21-mb.**

Tentative Ruling:

Updated tentative ruling as of 9/23/21. Off calendar. Continued by stipulation and order to 12/1/21 at 11:00 a.m. No appearances are required on 9/29/21.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley

Defendant(s):

Second Generation, a California

Pro Se

Plaintiff(s):

Catherine Trinh

Represented By
Alan W Forsley

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2:20-20799 Seung Hyeon Pak

Chapter 11

#1.10 Hearing re: Ex-Parte Motion to Extend Time for Scheduling Order Re: Confirmation of First Amended Small Business Plan of Reorganization under Chapter 11 and Related Dates and Deadlines

Docket 106

Tentative Ruling:

Updated tentative ruling as of 9/23/21. No tentative ruling on the merits. Appearances are required on 9/29/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Seung Hyeon Pak

Represented By
Anthony Obehi Egbase

Trustee(s):

Gregory Kent Jones (TR)

Pro Se

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#2.00 CONT'D EVIDENTIARY HEARING RE: Application for payment of: final fees and/or expenses (11 U.S.C. 330) for Philip Kaufler, special counsel, fee: \$123,922.50, expenses: \$1,864.50
fr. 5/26/21, 6/9/21, 6/30/21, 9/1/21

Docket 567

***** VACATED *** REASON: Cont'd from 9/29/21 to 10/21/21 at 2:00 p.m.
per stip & order entered on 9/22/21-mb.**

Tentative Ruling:

Updated tentative ruling as of 9/23/21. Off calendar. Continued by stipulation and order to 10/21/21 at 2:00 p.m. No appearances are required on 9/29/21.

)Prior tentative ruling as of 8/30/21. (1) Regarding applicant's claim that debtor is jointly and severally liable for attorneys' fees and costs in representation of multiple parties in the state court litigation represented by applicant as special litigation counsel, applicant will need to submit in camera a copy of the retainer agreement to substantiate debtor's joint and several liability. See California Civil Code sections 1659 and 1660; DKN Holdings LLC v. Faerber, 61 Cal.4th 813 (2015). Applicant needs to contact Mary Bakchellian, Judge Kwan's courtroom deputy clerk, to email a copy of the retainer agreement for in camera review. (2) Regarding the fee category of review of file and bankruptcy issues, objecting party Second Generation objects to fees for 26.2 hours totaling \$17,030 for reviewing pleadings and preparing summaries contending that such work is duplicative of work performed before the bankruptcy employment date of 2/9/18, in order for the court to evaluate the objection, applicant will need to submit his complete billing statements for the engagement representing debtor and the other clients before the bankruptcy employment date of 2/9/18. Second Generation provided copies of redacted billing statements from applicant, but they are incomplete. (3) In this category, there is 0.1 hour for preparing an email to Tony Trinh regarding bankruptcy issue which appears to be work for another client, not debtor. (4) Disallow 2.2 hours for reviewing adversary proceeding of Voong v. Trinh since debtor is represented by other counsel and such work is duplicative of other employed counsel. (5) Regarding employment, disallow 1.0 hour as 4.9 hours for review of employment application prepared by other

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employed counsel is excessive time. (6) Regarding motion to dismiss, disallow 0.5 hour as 1.2 hours for review of stipulation to dismiss prepared by opposing counsel excessive time as stipulation was simple. (7) Regarding motion for prejudgment interest, 7.8 hours is billed for review of purchase orders at partner rate which work is a paralegal function, and reduce hours to 4.0 hours because excessive and reduce rate to paralegal rate of \$200/hour. In re Long Dei Liu, No. 8:19-cv-001341-JLS, 2020 WL 5543041 (C.D. Cal. Sept. 14, 2020) at *11, citing, In re Music Merchants, Inc., 208 B.R. 944, 948 (9th Cir. BAP 1997). (8) Also regarding motion for prejudgment interest, disallow 6.2 hours for work preparing declarations as papers do not show that declarations were filed. (9) Applicant will need to explain why the fees for opposing Second Generation's writ of attachment are compensable as actual, necessary services benefiting the estate because the writ of attachment sought did not involve the debtor, but other nondebtor parties, that is, Second Generation sought a writ of attachment as to parties other than the debtor in this case. Applicant's argument in the application (Memorandum of Points and Authorities at 7) that it was important to oppose the writ of attachment because Second Generation was using this device in an attempt to obtain secured claims in the bankruptcy proceeding lacks merit because debtor was not a subject of the motion for writ of attachment. It appears that such services did not benefit the estate as argued by Second Generation as benefitting other parties and should be disallowed. In re B.E.S. Concrete Products, Inc., 93 B.R. 228, 234 (Bankr. E.D. Cal. 1988); In re Long Dei Liu, No. 8:19-cv-001341-JLS, 2020 WL 5543041 at *11-12. (10) Applicant will need to explain why the fees for opposing Second Generation's motion to add additional judgment debtors are compensable as actual, necessary services benefiting the estate because the judgment debtors to be added did not involve the debtor, but other nondebtor parties, that is, Second Generation sought to add additional judgment debtors who were not the debtor in this case. Applicant's argument in the application (Memorandum of Points and Authorities at 7) that he was required to coordinate with other counsel brought in to defend the additional judgment debtors to bring them up to speed on the ongoing litigation lacks merit because the motion involved parties other than the debtor and their counsel could get up to speed themselves. It appears that such services did not benefit the estate as argued by Second Generation as benefitting other parties and should be disallowed. In re B.E.S. Concrete Products, Inc., supra; In re Long Dei Liu, supra. (11) Regarding the work on

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the notice of appeal, there are no filed papers, and the application is unclear what the possible notice of appeal related to, that is, there is no explanation in the application as to the final order involving the debtor to be appealed and the basis for the possible appeal.

Appearances are required on 9/1/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 6/29/21. The court notes that applicant has filed the declaration of his client, debtor, in support of his fee application based on their agreement that he would discount his fees by 18%. However, it appears that creditor Second Generation, Inc., still asserts its objections to the fee application, which still makes it a contested matter under FRBP 9019. Having reviewed the fee application, the court determines that it will have to conduct an evidentiary hearing to resolve this contested matter and hear testimony from applicant as to the services that he performed for the estate that he claims are compensable as necessary, reasonable and beneficial to the estate. The court's main concerns are that applicant was representing multiple clients, including nondebtor parties, at the time he was representing the estate as special litigation counsel and thus, the fees and expenses should be prorated among his clients, and there is insufficient documentation to support the reasonableness of the fees for the major category of fees relating to opposing Second Generation's motion to add judgment debtors in the state court litigation in the amount of \$48,392.50. The court is unable to determine the reasonableness of fees for this category of services because the services were not performed in proceedings before this court. In contrast, applicant provided copies of pleadings for other matters for which fees are claimed, such as Second Generation's motion for attorneys' fees and motion for prejudgment interest in the state court litigation (roughly 800 pages in his request for judicial notice in support of his reply, mostly consisting of pleadings that the other side prepared), and the court is able to discuss these matters with applicant and the parties at the evidentiary hearing. At the hearing, applicant can provide testimony and additional documentary support for the claimed fees to demonstrate their reasonableness, for example, to explain the reasonableness of the fees of \$8,222.50 representing 12.65 hours

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of work, for his employment application which he did not prepare as it was prepared by general bankruptcy counsel for the debtor who is also applying for fees for the same application. The court estimates that such an evidentiary hearing would take two hours. Regarding the issue of proration, it would be helpful for the the court for the parties to file supplemental briefing on the issue. Interested parties should also consider the applicable legal standard for reasonableness under 11 U.S.C. 330 discussed in the tentative ruling on matter number 8. Appearances are required on 6/30/21 to discuss scheduling of the evidentiary hearing and for applicant to submit additional documentation, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 5/24/21. While applicant has corrected the service deficiency by servicing notice of the application and continued hearing on all creditors, he has failed to remedy the other deficiencies in the application as indicated in the court's prior tentative ruling as of 4/29/21, namely, he has not filed a supplemental declaration regarding his efforts to obtain the declaration of the client in support of the application or to describe his specific efforts to obtain such a declaration, and he has not yet provided a judge's copy of his 784-page reply papers in violation of LBR 5005-2(d) which impedes the court's review of the application papers.

The court will set a date for an evidentiary hearing on the application in light of the opposition to the application, which date will be set after a reasonable time for the court to review the papers once it receives the judge's copy of the reply papers. Because the fees claimed by this applicant overlaps with other applicants, namely, general bankruptcy counsel for debtor in possession, the court will also continue the further hearing on the final fee applications of the other professionals to 6/9/21 so that the court can consider the work of all these professionals due to their interrelationship to determine the reasonableness of all the claimed professional fees.

Appearances are required on 5/26/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

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Prior tentative ruling as of 4/26/21. Service of the application is deficient because the proof of service does not show that all creditors have been served with 21 days notice of the application as required by FRBP 2002(a)(6) and 9013. The hearing will have to be continued because applicant will have to serve all creditors with notice of the application.

The application is deficient because there is no separately filed declaration from the client indicating that she has reviewed the application and has no objection to it, and applicant's declaration describing the steps that were taken to obtain the client's declaration and response thereto as required by LBR 2016-1(a)(1)(J) and (c)(2) is deficient because it is vague and conclusory as to the details of such steps to contact the client and obtain her declaration.

The hearing will also have to be continued because the court needs additional time to review the reply documents filed on 4/21/21 by applicant consisting of about 800 pages of documents as the court has not received the judge's copy of the reply papers which applicant was required to deliver to chambers as required by LBR 5005-2(d) and Court Manual sections 2.5 and 3.5(b) and Appendix F.

The hearing will also have to be continued because the court has not completed its review for reasonableness under 11 U.S.C. 330 of the fees for services performed as reflected in the voluminous billing entries attached to the application and the need to review the documents relating to the tasks that were performed by applicant, including the some 784 pages of documents submitted by applicant in his request for judicial notice accompanying his reply to the opposition. In conducting this review, the court will have to review matters on the docket, such as the pleadings filed by applicant and monthly operating reports, and fee applications of other professionals because it seems to the court that some of the fees are not reasonable. The court expects to review the reasonableness of fees of all professionals on specific tasks to determine the reasonableness of all fees claimed. The court has concerns that there may be duplication of effort since multiple professionals are involved on the same tasks, such as relating to the appeals in debtor's state court litigation and preparation of applicant's employment application (i.e., work performed by multiple attorneys in the firm

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as well as special litigation counsel), and the general reasonableness of charges, such as excessive time spent on particular tasks (i.e., applicant's employment application, preparation of the opposition to the motion of Second Generation for prejudgment interest).

The court will also treat the application as a contested matter under FRBP 9014 in light of opposition of creditor Second Generation, Inc. and set an evidentiary hearing on the application to resolve factual issues of reasonableness of the fees claimed by applicant. Parties to address scheduling of the evidentiary hearing, and whether discovery is needed. Appearances are required on 4/28/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley

Movant(s):

Philip Kaufler

Pro Se